

REMARKS

Claims 1-19, 21-27 and 29-31 are pending in this application. Claims 17, 21, 23, 24, 27 and 29 are currently amended. Claims 1-16, 18, 19, 22, 25, 26, 30 and 31 were previously presented. Claims 20 and 28 are cancelled.

The Examiner objected to claim 29 due to an informality. This informality has been corrected by amendment.

Claims 1, 8, 16 and 17 have been rejected under 35 U.S.C. §102(e) as being anticipated by Fleming, III. Applicant respectfully submits that Fleming, III is not prior art against the rejected claims. These claims are fully supported by the disclosure of Applicant's PCT application, from which the present application claims priority. Applicant's PCT application was filed on March 17, 2000. Fleming, III was filed on September 29, 2000, as a CIP of an application filed on April 25, 2000.

The present application was conservatively filed as a continuation-in-part of the PCT application (which designated the United States) in order to address a disputed added matter issue raised by the European Patent Examiner in the International Preliminary Examination Report. The issue raised by the European Examiner, which in any event was based on a technicality of European patent law, concerned only claims 4 and 5 of the PCT application (claims 5 and 6 of the present application), which are not rejected over Fleming, III. No new matter was added to the PCT application on entry into the U.S. national phase.

There has never been an issue raised with respect to whether claims 1, 8, 16 and 17 are fully supported by Applicant's PCT application as filed, either during the International phase of the application or during the U.S. prosecution. Nevertheless, for completeness, we will point out the basis for all the features of present claims 1, 8, 16 and 17 in the published PCT application (which, as the Examiner will appreciate, corresponds with the PCT application as filed). Also, for ease of reference we are submitting herewith a copy of the published International application, WO 00/56220.

Comparing pending claim 1 with claim 1 of the published PCT application, the present claim 1 includes the following added language: "a single hollow tube, configured for both

cutting and receiving a tissue sample, coupled to said handle; said tube having (a) a bore defining a tissue-receiving space for said tissue sample, (b) a substantially rigid tip, and (c) an outer wall configured to contact said tissue."

A single hollow tube 3 may be seen, for example, in FIGS. 4b, 5a, 5d through 5h and in FIGS. 7a through 7f (cutting and receiving a tissue sample). This element is further described in the specification at, among other places, pages 9, 10, 13 and 14.

The same figures and text show and describe the tube 3 as having a bore defining a tissue-receiving space and a substantially rigid tip (see also, e.g., line 2 of page 11), while FIG. 7 shows the outer wall of the tube contacting the bone marrow tissue.

Thus, all of the additional language in claim 1 is fully described in and supported by the specification and figures of the PCT application as filed.

With regard to claims 8, 16 and 17 of the U.S. patent application, these claims correspond to claims 8, 15 and 16, respectively, of the PCT application as filed, and thus are fully supported by the specification of the PCT application as originally filed.

In view of the above, Applicant respectfully requests that this rejection be withdrawn.

Please apply any charges or credits to deposit account 06-1050.

Respectfully submitted,

Date: 10/22/03

Paul Cervi Reg. No. 33,524

Timothy A. French
Reg. No. 30,175

Fish & Richardson P.C.
225 Franklin Street
Boston, MA 02110-2804
Telephone: (617) 542-5070
Facsimile: (617) 542-8906